

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA S. CRAMER)	
Claimant)	
VS.)	
)	Docket No. 251,293
SABRELINER CORPORATION)	
Respondent)	
AND)	
)	
RELIANCE NATIONAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from an Order designating an authorized physician to provide claimant's medical treatment entered by Administrative Law Judge Jon L. Frobish on May 25, 2000.

ISSUES

1. Did the ALJ exceed his jurisdiction in designating Dr. Flutter as the authorized treating physician at a hearing held pursuant to claimant's Motion for Penalties?¹
2. Did the ALJ exceed his jurisdiction in designating Dr. Flutter as the authorized treating physician when respondent failed to timely provide a list of three physicians as ordered?²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds the issues raised by respondent do not give rise to a jurisdictional issue and the Appeals Board is therefore not authorized to review the Order at this stage of the proceeding.

¹ See K.S.A. 44-512a.

² See K.S.A. 1999 Supp. 44-510(c)(1).

Claimant alleges she injured her back lifting and moving parts on or about "12-6-99 and/or each working day thereafter and/or 1-19-00 and/or each working day thereafter."³ Respondent authorized treatment with Gregory H. Mears, D.O., who ordered physical therapy, prescribed medication and a TENS unit. Claimant continued to have difficulties with her back and rather than return to Dr. Mears, claimant filed an Application for Preliminary Hearing and requested that the treating physician be changed. At the conclusion of the April 4, 2000 preliminary hearing, the ALJ granted claimant's request.

The ALJ's April 4, 2000 Order required respondent to provide a list of three physicians from which claimant could choose one. His Order did not provide any specific time frame within which respondent was to provide the list of three names. Apparently claimant anticipated that the list would not be immediately forthcoming because on April 5, 2000 claimant served a Demand for Compensation which provided that if the ordered list of physicians was not provided within twenty days claimant would seek "the appropriate statutory penalties and attorney's fees." The twenty days passed without the list being received and claimant's Motion for Penalties and Notice of Hearing followed. Respondent did eventually provide a list of three physicians but claimant advised Judge Frobish at the hearing that those doctors were not acceptable and a physiatrist was requested.

Although the May 25, 2000 hearing was scheduled as a hearing on claimant's Motion for Penalties, Judge Frobish agreed with respondent's counsel and determined that the proceeding was actually in the nature of a preliminary hearing because claimant was seeking medical treatment which is a preliminary benefit.⁴ In order to not further delay the claimant's medical treatment, the ALJ authorized Dr. Flutter without requiring respondent to provide another list of three physicians and without requiring claimant to provide new notice of hearing.

The Appeals Board agrees that the hearing was better characterized as a preliminary hearing rather than a penalty hearing and further finds that the respondent received adequate notice.⁵ The claimant's Motion for Penalties and Notice of Hearing served on respondent referenced the ALJ's April 4, 2000 Order and the claimant's Demand for Compensation which both, in turn, contained the requirement that respondent provide the list of three physicians. Respondent was well apprised that medical treatment would be an issue at the hearing.

The Kansas Supreme Court in Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988) in holding that the failure to file a second claim or to amend his original

³ Form K-WC E-1 Application for Hearing, filed January 31, 2000.

⁴ K.S.A. 1999 Supp. 44-534a(a).

⁵ See Hong Van Nguyen v. IBP, Inc., 266 Kan. 580, 972 P.2d 747 (1999).

claim did not prevent the claimant from recovering for his disability from the second accident, emphasized that an objective of the workers compensation law is to avoid the "cumbersome procedures and technicalities of pleadings, so that a correct decision may be reached by the shortest and quickest possible route."⁶ In that case, the respondent was aware of the second accident, and the Court concluded that there would be no prejudice to the employer.

Respondent also argues that the ALJ violated provisions of K.S.A. 1999 Supp. 44-510(c)(1) which states in pertinent part as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

Whether an administrative law judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. An administrative law judge has the jurisdiction to decide this question.⁷

WHEREFORE, the Appeals Board finds and concludes that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issues raised and the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on May 25, 2000 should, and does, remain in effect.

IT IS SO ORDERED.

⁶ Pyeatt at 205.

⁷ Briceno v. Wichita Inn West, Docket No. 211,226 (February 1997) and Graham v. Rubbermaid Specialty Products, Docket No. 219,395 (June 1997).

Dated this ____ day of July 2000.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Christopher J. McCurdy, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director